



Form 2

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

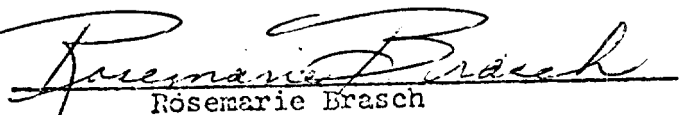
ORDER

To accompany ( Award No. 6709  
( Docket No. 6537

Mr. E. A. Manetta  
Vice President  
Personnel  
Norfolk & Western Railway Co.  
Roanoke, Virginia 24011

The Norfolk & Western Railway Company is hereby ordered  
to make effective Award No. 6709 made by the Second Division of the  
National Railroad Adjustment Board (copy of which is attached and made a  
part hereof) as therein set forth; and if the award includes a requirement  
for the payment of money, to pay to the employee (or employees) the sum to  
which he is (or they are) entitled under the award on or before the 8th  
day of July, 1974.

Executive Secretary  
National Railroad Adjustment Board  
By Order of Second Division

By   
Rosemarie Brasch  
Administrative Assistant

Dated at Chicago, Illinois, this 7th day of June, 1974.



The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: ( System Federation No. 16, Railway Employees'  
( Department, A.F. of L. - C.I.O.  
( (Carmen)  
( Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the Current Working Agreement Carman Tommy Mallory was unjustly dismissed from all services with the Carrier on December 29, 1971, as a result of an investigation held on December 17, 1971.
2. That the Carrier be ordered to restore Carman Tommy Mallory to service and to his former position with seniority unimpaired, fringe benefits and pay him eight (8) hours at pro rata rate of pay for December 29, 1971, and for each day thereafter until he is restored to service.
3. That the Carrier be ordered to pay Carman Tommy Mallory an additional 6% per annum compounded annually on the anniversary date of claim.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was advised to appear for a formal investigation to determine his responsibility, if any, "for being under the influence of alcohol while on duty at Osborn, Indiana, at approximately 11:20 p.m., December 10, 1971." After the investigation he was dismissed from service effective December 29, 1971. He had been employed by the Carrier for about 16 years.

Claimant's assigned hours as a Carman were from 4:00 p.m. to 12:00 midnight. At about 11:20 p.m. on December 10, 1971, the Claimant was accosted by Carrier's supervisors who determined that he had consumed an alcoholic beverage. That the Claimant had taken a drink or two is not denied. He testified that he had a few drinks but that he was not staggering.

Employees support Claimant's position that he was not working and was not on duty at 11:20 p.m. on December 10, 1971. He contends that he went home at about 5:30 p.m. because he had trouble with his teeth. He came back, he said, around 11:00 p.m. to pay his debts to other Carman. There is no probative evidence to support this position. He was not marked off and his time card was made out for full 8 hours of work. His attempted explanations cannot be accepted as facts.

Carrier was not obliged to enter Claimant's work record in the investigation notice. Claimant's prior record revealed that he had been assessed a 30-day suspension on December 24, 1970 for improper performance of his duties resulting in a derailment. No other penalty was on his record during all of the 16 years of employment. He had not previously been disciplined for consuming alcoholic beverages.

Claimant's offense on December 10, 1971 was a serious one. He deserved to be penalized. But because of his work record of 16 years with only one blemish for an act unrelated to alcohol, we believe that the Carrier acted arbitrarily and capriciously in assessing the extreme penalty. Sixteen years of service with such a record deserves more consideration. Claimant has been out of service for more than two years. That is more than an adequate penalty. In view of the testimony in the investigation record, he is entitled to no compensation for the time he has been held out of service. The Board, therefore, finds that the Claimant shall be reinstated as an employee of the Carrier with full seniority and other contractual rights preserved and unimpaired, but with no compensation of any kind from the date he was held out of service to the date of his reinstatement.

#### A W A R D

Claim is sustained in accordance with the findings.

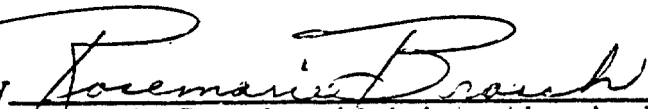
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Award No. 6709  
Docket No. 6537  
2-N&W-CM-'74

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of June, 1974.

